UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LOUIS F. GAINES,	)	IP 98-1741-C-M/S
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WHITE RIVER ENVIRONMENTAL PARTNERSHIP, et al.,	)	
	)	
Defendants.	)	

ENTRY DISCUSSING SECOND MOTION TO AMEND COMPLAINT AND SETTING DISCOVERY CONFERENCE

I. Second Motion to Amend Complaint

On June 1, 1999, the plaintiff filed his "second motion to amend complaint. The essence of this motion is that the plaintiff seeks to expand on his claims in this action by asserting the same claim which has been submitted to the EEOC in the form of a charge of discrimination, *No. 240-99-1616.

The charge of discrimination in No. 240-99-1616 was filed on May 4, 1999, and alleges retaliation and age discrimination from January 10, 1998 through April 20, 1999, and is included as an exhibit to the motion. Although the plaintiff

has requested a right to sue letter from the EEOC, no right to sue notice had been issued with respect to No. 240-99-1616 as of the filing of the plaintiff's motion on June 1, 1999.

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* A subsidiary portion of the second motion to amend amounts to the plaintiff's effort to bolster his claims with additional details he believes to be supportive of his claims. It is unnecessary and unhelpful to replead a claim with increasing detail. The details of the plaintiff's claims are precisely what discovery and various pretrial disclosures are designed to unveil.

No cognizable claim under Title VII could be stated in relation to events after January 10, 1998, until a right to sue notice has been issued. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47 (1974). No amendment to a pleading should be permitted if the amendment would be futile, and an amendment would be futile if it could not withstand a motion to dismiss under Rule 12(b)(6). *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997).

Because the additional claim of discrimination which the plaintiff proposes to assert relating to the charge of discrimination in No. 240-99-1616 was filed on May 4, 1999, could not be maintained at this point (because no right to sue letter has been issued), the proposed amendment would be futile. The plaintiff's second motion to amend

is therefore denied.

The plaintiff's "proposed motion to amend complaint, filed on June 10, 1999, is duplicative of the second motion to amend complaint and is denied as such.

II. Discovery Conference

...

IT IS SO ORDERED

s/ LARRY J. McKINNEY, Judge
United States District Court

Date: August 19 1999

Copies to:

Louis F. Gaines, 5337 N. College Avenue, Indianapolis, IN 46220

Hudnall Pfeiffer, Carolyn Coleman, Baker & Daniels, 300 N. Meridian St., Suite 2700, Indianapolis, IN 46204

Glen Cunningham, Court Reporter

Pro Se Administrator

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LOUIS F. GAINES,	)	
	)	
Plaintiff	)	
	)	
v.	)	IP-98-1741-C-M/C
	)	
WHITE RIVER ENVIRON-MENTAL PARTNERSHIP, et al.,	)	
	)	
	)	
Defendants	)	

ENTRY CONCERNING SELECTED MATTERS

The court, having considered the above action and the matters which are pending, now makes the following rulings:

...

3. In the court's Entry of August 19, 1999, in which it denied the plaintiff's second motion to amend complaint, the court based its decision on its understanding that the plaintiff had not received a right to sue notice from the EEOC with respect to charge No. 240991616 as the filing of the plaintiff's motion on June 1, 1999. Through inadvertence, the court did not acknowledge in its Entry of August 19, 1999, that on July 12, 1999, the plaintiff filed a copy of the right to sue notice

just described. In order to correct and clarify the record, the court now reconsiders the portion of its ruling of August 19, 1999, which denied the plaintiff's second motion to amend complaint.

a. The charge of discrimination in No. 240991616 was filed with the EEOC on May 7, 1999, and alleged retaliation and age discrimination occurring from January 5, 1999, through April 20, 1999, which was after the complaint in this action was filed. The right to sue notice relating to charge NO. 240991616 was issued on July 9, 1999.

b. The procedure posture of this action is as follows: the action was filed on December 18, 1998, the defendants filed a motion for summary judgment on July 9, 1999, and discovery is seemingly tumultuous. In *Sanders v. Venture Stores, Inc.*, 56 F.3d 771, 774-75 (7th Cir. 1995), the Seventh Circuit cited a number of its published decisions which had affirmed the denial of a motion to amend after the filing, briefing or decision of a motion for summary judgment. The principal basis of the court's decisions in these cases was the unwarranted delay and burden an amended complaint would bring to the litigation.

c. The court finds that the present litigation also has progressed too far to permit the addition of entirely new claims, based on events unrelated to the events which supported the filing of the original complaint. A motion for summary judgment has been filed and the parties are embroiled in discovery concerns relating to the

claims in the amended complaint. Under these circumstances, the plaintiff's second motion to amend complaint, filed on June 1, 1999, remains denied. The ruling in Part I of the Entry issued on August 19, 1999, remains in effect, though modified by the additional factual matters noted in this Entry. For the same reasons, the plaintiff's third motion to amend complaint, filed on August 23, 1999, is also denied.

...

IT IS SO ORDERED.

s/ LARRY J. McKINNEY, Judge
United States District Court

Date: October 25, 1999

Copies to:

Louis F. Gaines, 5337 N. College Avenue, Indianapolis, IN 46220

Hudnall Pfeiffer, Carolyn Coleman, Baker & Daniels, 300 N. Meridian St., Suite 2700, Indianapolis, IN 46204.

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT Of APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 5, 2001
Decided March 23, 2001

Before

Hon. F. H. EASTERBROOK, Circuit Judge

Hon. D. A. MANION, Circuit Judge

Hon. D. P. WOOD, Circuit Judge

No. 00-3802	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division
LOUIS F. GAINES, Plaintiff-Appellant	
v.	
WHITE RIVER ENVIRONMENTAL PARTNERSHIP, et al., Defendants-Appellees	No. 98-1741-C-M/S Larry J. McKinney, Chief Judge

ORDER

Louis Gaines, an African-American employed as an Operation Specialist for the defendant White River Environmental Partnership (WREP), filed

this employment discrimination suit in December 1998 under Title VII, 42 U.S.C. 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and 42 U.S.C. § 1981. The district court granted summary judgment for the defendants, holding that Gaines had not established a prima facie case of discrimination. Gaines appeals and we affirm.

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No. 00-3802 Page 3

For the foregoing reasons, we Affirm the grant of summary judgment to WREP. All pending motions in this case are Denied.

UNITED STATES COURT OF APPEALS

For the Seven Circuit
Chicago, Illinois 60604

May 17, 2001

Before

Hon. F. H. EASTERBROOK, Circuit Judge

Hon. D. A. MANION, Circuit Judge

Hon. D. P. WOOD, Circuit Judge

No. 00-3802

LOUIS F. GAINES,
Plaintiff-Appellant

v.

WHITE RIVER ENVIRONMENTAL PARTNERSHIP, et al.,
Defendant-Appellee

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division

No. 98-1741-C-M/S

Larry J. McKinney, Chief Judge

ORDER

Our order of March 23, 2001 affirmed the district court's grant of summary judgment to the defendants in Gaines's employment discrimination

suit. Because Gaines' claims were frivolous and his litigation strategy was marked by the filing of numerous motions and appeals containing spurious allegations of impropriety of Judge McKinney and defense counsel, we directed Gaines show cause why sanctions should not be imposed under Federal Rule of Appellate Procedure 38. Gaines has filed his response, and the matter is ready for decision.

Rather than present a reason not to sanction him, Gaines's response demonstrates that he wishes to continue to his frivolous litigation strategy. In his response, Gaines reiterates his belief that the defendants have violated his rights, asserts that all of his filings were necessary to defend his rights, and suggests that we should sanction the defendants rather than him. Furthermore, three days after he filed his response Gaines filed a petition for rehearing of his appeal, once again raising the same frivolous claims of discrimination.

Gaines is hereby sanctioned $1,000 for filing a frivolous appeal. Gaines shall tender a check payable to the Clerk, United States Court of Appeals, in the amount of $1,000 by May 30, 2001. Furthermore, we DENY his petition for rehearing.